

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

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AUG 23 2002

In the Matter of)
)
AMENDMENT OF SECTION 73.622(b),)
TABLE OF ALLOTMENTS,)
DIGITAL TELEVISION BROADCAST)
STATIONS)
(AVALON, CALIFORNIA))

FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

MB Docket No. 02-223
RM-10520

To: The Chief, Video Division, Media Bureau

PAPPAS SOUTHERN CALIFORNIA LICENSE, LLC'S REPLY COMMENTS

Pappas Southern California License, LLC ("PSCL"), the licensee of primary analog UHF commercial television broadcasting station KAZA-TV, NTSC Channel 54, Avalon, California, by its undersigned counsel and in accordance with Section 1.420 of the Commission's Rules, hereby respectfully submits these Reply Comments in response to two filings that were made in this proceeding by, respectively, (i) Coast Community College District ("CCCD") and Costa de Oro Television, Inc. ("Costa"), jointly, ¹ and (ii) Sunbelt Television, Inc. ("Sunbelt") ² in response to the Commission's *Notice of Proposed Rulemaking* ("NPRM") in the above-captioned

¹ Joint Comments of Coast Community College District and Costa de Oro Television, Inc., filed in this proceeding under date of August 15, 2002 ("Joint Comments").

² Counterproposal filed in this proceeding under date of August 15, 2002 ("Counterproposal").

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proceeding, DA 02-1938, adopted on August 5, 2002 and released on August 7, 2002, 17 FCC Rcd. ___, 67 Fed. Reg. 53899 (published on August 20, 2002).³

REPLY TO JOINT COMMENTS OF CCCD AND COSTA

CCCD is the licensee of primary analog UHF noncommercial, educational television broadcasting station KOCE-TV, NTSC Channel 50, Huntington Beach, California. CCCD is also the holder of a construction permit from the Commission⁴ that authorizes CCCD to build new primary digital UHF noncommercial, educational television broadcasting station KOCE-DT, Huntington Beach, California, on Digital Television ("DTV") Channel *48, with the facilities of such station located on Mount Wilson.

Costa is the licensee of primary analog UHF commercial television broadcasting station KJLA (TV), NTSC Channel 57, Ventura, California. Costa is an applicant to the Commission for a construction permit⁵ that would authorize Costa to build new primary digital UHF commercial television broadcasting station KJLA-DT,

³ Apart from the "Joint Comments" of CCCD and Costa and the "Counterproposal" of Sunbelt, notes 1 and 2, *supra*, and PSCL's own "Comments" that were filed in this proceeding on August 15, 2002, PSCL is unaware of any other filings in response to the *NPRM*. Pursuant to Paragraph 9 of the *NPRM*, a copy of any filing in response to the *NPRM* was required to have been served by hand delivery upon PSCL's undersigned counsel.

⁴ File No. BPEDT-19991101AKY, granted on August 30, 2001, expiring on May 1, 2003.

⁵ File No. BPCDT-19991101AFT, as amended.

Ventura, California, on DTV Channel 49, with the facilities of such station located on Mount Wilson.

In their Joint Comments, CCCD and Costa state as follows:

Once the Commission has granted not only the KOCE-DT construction permit but also the interrelated KJLA-DT construction permit (both specifying collocation at Mount Wilson), KOCE-TV would be in a position to state that it waives its rights to protection of its digital allotment site at La Habra Heights.⁶

Of course, the Commission had already granted the KOCE-DT construction permit at the time that CCCD and Costa submitted their Joint Comments.⁷

PSCL has been advised that Costa's application for a construction permit for KJLA-DT in File No. BPCDT-19991101AFT, as amended, has been reviewed by the Commission's staff in the Media Bureau and has been found to be grantable, save for the need to obtain final concurrence from the Mexican government with respect to a recent amendment to the application, filed by Costa for the express purpose of satisfying certain conditions specified by the Mexican government when it concurred in the facilities proposed in the original, unamended KJLA-DT application. PSCL has been further

⁶ Joint Comments, p. 5.

⁷ See note 4, *supra*.

advised that the International Bureau has informed the Media Bureau that Mexican concurrence is now assumed, based upon the minor nature of the recent amendment to Costa's application and the fact that such amendment was expressly designed to satisfy the conditions specified in the earlier Mexican concurrence to the original, unamended KJLA-DT application.

Accordingly, PSCL believes that a grant of Costa's application is imminent. As noted in the above-quoted passage from the Joint Comments of CCCD and Costa, upon the grant of Costa's application, CCCD's requirements for waiving whatever rights it may have to insist upon the protection by PSCL's proposed new DTV station operating on DTV Channel 47 from Mount Wilson to KOCE-DT's DTV Channel *48 allotment site at La Habra Heights will have been fulfilled. Pursuant to certain agreements between CCCD and PSCL, upon the grant of the KJLA-DT application, CCCD will provide the Commission with a document evidencing CCCD's waiver of such rights. It is believed and hoped that the foregoing events can be accomplished prior to the Commission's conclusion of the instant proceeding within the time frame set out in Section 531 of the Public Health, Security, and Bioterrorism Preparedness and Response Act of 2002 (the "Bioterrorism Preparedness Act").⁸ If not, however, PSCL's Comments in this proceeding, filed on August 15, 2002, provide the Commission with an expedient alternative: the Commission may, consistent with its established policies and practices,

⁸ Public Law No. 107-188, 116 Stat. 594 (enacted June 12, 2002).

allot DTV Channel 47 to a hypothetical reference point located on the Island of Santa Catalina, where Avalon is situated, for use by PSCL; and at the subsequent application stage, PSCL can apply to the Commission for a construction permit to build the new DTV station on DTV Channel 47 on Mount Wilson with the desired facilities, by which time PSCL is confident that the KJLA-DT application will have been granted by the Media Bureau, CCCD's requirements for waiving any rights it may possess to the protection of KOCE-DT's DTV Channel *48 allotment site at La Habra Heights will have been fully satisfied, and CCCD's written evidence of its waiver of those rights will have been provided to the Commission.

SUNBELT'S COUNTERPROPOSAL

Sunbelt is the licensee of primary analog UHF commercial television broadcasting station KHIZ (TV), NTSC Channel 64, Barstow, California. Sunbelt is also an applicant to the Commission for a construction permit to build new primary digital UHF commercial television broadcasting station KHIZ-DT, Barstow, California, on DTV Channel 44.⁹ Sunbelt's Counterproposal urges the Commission not to allot DTV Channel 47 to Avalon, as proposed in the *NPRM*, but rather to allot DTV Channel 47 to

⁹ File No. BPCDT-19991028ACX.

Barstow, in order to replace KHIZ-DT's existing allotment of DTV Channel 44 at Barstow.¹⁰

Preliminarily, Sunbelt's Counterproposal must be dismissed on procedural grounds. In the first instance, contrary to the explicit requirements of the *NPRM*, at Paragraph 9,¹¹ a copy of the Counterproposal was not served by hand upon counsel for PSCL at the time of the filing of the Counterproposal (August 15, 2002). Rather, a copy of the Counterproposal was delivered to PSCL's undersigned counsel on Friday, August 16, 2002. Given the short period between the date for the filing of opening comments and reply comments in this proceeding, Sunbelt's failure to have followed the prescribed procedure for service by hand-delivery of a copy of its Counterproposal upon PSCL's counsel, which procedure was repeated in Paragraph 4 of the Appendix to the *NPRM*, is a significant lapse that should be fatal to the Counterproposal.

Moreover, while counterproposing the allotment of DTV Channel 47 to Barstow, Sunbelt failed to make an affirmative written commitment in its Counterproposal that if such allotment were to be made by the Commission, Sunbelt would promptly apply for the Commission's authorization to build its DTV station KHIZ-DT on such channel, and – if so authorized – would promptly build such a station

¹⁰ Counterproposal, pp. 1-2.

¹¹ See note 3, *supra*.

on the channel. It is clear that, just as the making of such a written commitment is required of petitioners in broadcast channel allotment rule making proceedings,¹² the making of such a written commitment is also required of counterproponents in such proceedings. *Amendment of Section 73.622(b), Table of Allotments, Digital Television Broadcast Stations (Kansas City, Missouri)*, 16 FCC Rcd. 14488, n. 1 (Chief, Video Services Division, 2001) (counterproposal in proceeding to amend Table of Allotments for Digital Television Broadcast Stations found unacceptable where, *inter alia*, counterproponent failed to file *bona fide* expression of interest to use channel that was subject of counterproposal); *Amendment of Section 73.202(b), Table of Allotments, FM Broadcast Stations (Caldwell, College Station, and Gause, Texas)*, 13 FCC Rcd. 13772, 13780 at Para. 22 (1998) (counterproponent failed to express interest in applying for channel that was subject of counterproposal; in absence of such expression, counterproposal denied), *aff'd sub nom. Henderson v. FCC*, 2001 U.S. App. LEXIS 13901; *cf. Amendment of Section 73.202(b), Table of Allotments, FM Broadcast Stations (Lopez and Dushore, Pennsylvania)*, 7 FCC Rcd. 854, 854-55 at Paragraph 7 (Chief, Policy and Rules Division, 1992) (although counterproposal initially contained clear expression of interest in applying for channel that was subject of counterproposal, counterproponent's subsequent letter indicating only that he would assist others in applying for channel held fatal to counterproposal).

¹² See, e.g., *NPRM*, Appendix at Paragraph 2: "The proponent of a proposed allotment . . . should also restate its present intention to apply for the channel if it is allotted and, if authorized, to build a station promptly. Failure to file may lead to denial of the request."

If not dismissed for its procedural deficiencies, Sunbelt's Counterproposal should be summarily denied for its utter want of merit. In contrast to the *NPRM*, which proposes to add a new DTV channel to a community (Avalon) that is currently lacking such a channel, in fulfillment of Section 531 of the Bioterrorism Preparedness Act, which sets forth specific Congressional findings supporting such action "[i]n order to further promote the . . . equitable allocation and use of digital channels by television broadcast permittees and licensees, . . ." ¹³, Sunbelt's Counterproposal offers only a "zero-sum" game: replace an existing DTV channel allotment at Barstow (DTV Channel 44) with a new DTV channel allotment at Barstow (DTV Channel 47) in a manner that would deprive the community of Avalon of its only opportunity for a DTV channel allotment and that would thereby frustrate the purposes of the Bioterrorism Preparedness Act. ¹⁴

CONCLUSION

WHEREFORE, the foregoing having been duly considered, PSCL respectfully urges the Commission to dismiss or to deny Sunbelt's Counterproposal in this proceeding and to amend the Table of Allotments for Digital Television Broadcast

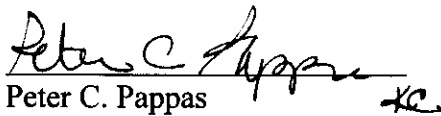
¹³ Public Law No. 107-188, 116 Stat. 594 (enacted June 12, 2002).

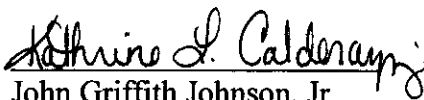
¹⁴ Moreover, the proposal set forth in the *NPRM* is superior to the Counterproposal when analyzed under Section 307(b) of the Communications Act of 1934, as amended, which directs the Commission to distribute licenses among the various states and communities in a "fair, efficient and equitable" manner, due to the fact that the *NPRM* would provide a community with a new channel, while the Counterproposal would merely replace a community's existing channel with a different channel.

Stations, 47 C.F.R. Section 73.622(b) (2001), in accordance with the *NPRM* and PSCL's
Comments in this proceeding that were filed on August 15 2002.

Respectfully submitted,

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August 23, 2002


CERTIFICATE OF SERVICE

I, Alicia M. Altamirano, a secretary in the law firm of Paul, Hastings,
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